

1 Hon. Kymberly K. Evanson
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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DENNIS E. DAVIS, individually and on behalf
11 of all others similarly situated,

12 Plaintiff,

13 v.

14 SYMETRA LIFE INSURANCE COMPANY,

15 Defendant.

16 Case No. 2:21-cv-00533-KKE

17 **STIPULATION AND JOINT MOTION
18 TO MODIFY SCHEDULING ORDER
19 AND PROPOSED ORDER**

20 **Noted on Motion Calendar: 3/20/2024**

1 Pursuant to Rule 16(b)(4), LCR 16(b), and this Court's Chambers Procedures for Civil
 2 Cases, Plaintiff Dennis Davis and Defendant Symetra Life Insurance Company jointly and
 3 respectfully move this Court to enter a briefing schedule relating to Symetra's forthcoming motion
 4 for summary judgment and to modify the current scheduling order at ECF No. 57.

5 Symetra intends to file its motion for summary judgment on March 28, 2024. While this
 6 Court's Chambers Procedures section III encourages the Parties to coordinate cross-motions on
 7 summary judgment, Plaintiff does not intend to file an early motion for summary judgment, both
 8 because the one-way intervention rule, which Symetra has confirmed it will not waive, precludes
 9 a ruling on any motion for summary judgment by Plaintiff until after this Court's ruling on class
 10 certification and any opt-out period expires, *see, e.g., Centeno v. Quigley*, No. C14-200 MJP, 2015
 11 WL 432537, at *2–3 (W.D. Wash. Feb. 2, 2015), and because it would be inefficient for Plaintiff
 12 to move affirmatively for summary judgment in favor of the putative class, prior to a ruling that
 13 determines the actual scope of the class. Accordingly, while Plaintiff is not moving for summary
 14 judgment at this time, he reserves his right to do so at the appropriate time. Plaintiff does not object
 15 to Symetra filing a motion for summary judgment *now* but would object to Symetra *later* filing
 16 another motion for summary judgment absent good cause if the grounds for the later summary
 17 judgment motion were available to it at the time it first moved for summary judgment. *See, e.g.,*
 18 LCR 7(e)(3). Symetra believes Plaintiff's objection is premature and, in any event, does not
 19 concede to Plaintiff's objection. The Court, however, need not resolve this issue at this juncture.

20 Good cause exists for the modification. Symetra believes that it will likely need three weeks
 21 to adequately and thoroughly prepare its reply briefs in support of its motions to exclude expert
 22 opinion (ECF No. 81) and for summary judgment, beyond the four days ordinarily provided by
 23 LCR 7(d). Plaintiff does not object to this extension of time but requests that Plaintiff's reply brief
 24 in support of class certification remain due on the same day as Symetra's reply in support of its
 25 motion to exclude Plaintiff's expert opinion supporting class certification. Additionally, due to the
 26 overlapping briefing schedules, the Parties request that the usual deadlines for dispositive motions
 27 be altered slightly to minimize concurrent briefing obligations on either Party. Moreover, the
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1 Parties contend that extending these deadlines now through a comprehensive stipulation, rather
 2 than potentially seeking piecemeal extensions, will promote orderly and efficient briefing and
 3 avoid the potential for last-minute requests to modify.

4 Additionally, because under the present schedule Plaintiff's reply in support of motion for
 5 class certification is due on the same day as Symetra's reply in support of its motion to exclude
 6 expert opinion and because these motions will inherently be considered together, the Parties
 7 request that Plaintiff's deadline to file his reply in support of class certification should be extended
 8 to coincide with Symetra's deadline to file its reply in support of its motion to exclude expert
 9 opinion. This modification is in the interest of basic fairness and will eliminate any possibility or
 10 appearance that either party is using reply briefs to address improper sur-reply arguments. Because
 11 all other deadlines are to be determined after the Court issues its decision on Plaintiff's motion for
 12 class certification, this modification and briefing schedule will not meaningfully impact other case
 13 deadlines. To accommodate the orderly and thorough briefing of these three important motions,
 14 the Parties met and conferred and jointly propose modifying the current case schedule as follows:

Event	Current Deadline (ECF 57)	Proposed Deadline
Deadline to file Defendant's motion for summary judgment	None.	Thursday, March 28, 2024
Deadline to file Plaintiff's opposition to motion to exclude expert opinion (ECF 81)	Monday, April 1, 2024	Monday, April 1, 2024 (unchanged)
Deadline to file Defendant's Reply brief in support of motion to exclude expert opinion (ECF 81)	Friday, April 5, 2024	Monday, April 22, 2024
Deadline to file Plaintiff's Reply brief in support of class certification motion and any objection to Defendant's experts	Friday, April 5, 2024	Monday, April 22, 2024
Rebuttal reports from Plaintiff's expert witnesses under FRCP 26(a)(2) for use in support of class certification	Friday, April 5, 2024	Monday, April 22, 2024

Event	Current Deadline (ECF 57)	Proposed Deadline
Deadline to file Plaintiff's opposition to Defendant's motion for summary judgment	None.	Friday, April 26, 2024
Deadline to file Defendant's Reply brief in support of motion for summary judgment	None.	Friday, May 17, 2024
Settlement Conference, if mediation has been requested by the parties per LCR 39.1, held no later than	Friday, May 24, 2024	Friday, May 24, 2024 (unchanged)
Mediation per LCR 39.1, if requested by the parties, held no later than	Friday, June 28, 2024	Friday, June 28, 2024 (unchanged)

The Parties expect that the proposed schedule will narrow the issues and discovery remaining, if any, for trial. In accordance with this Court's October 10, 2023, Order (ECF No. 57), the Parties request that all other case deadlines be determined after the Court's issuance of its decision on Plaintiff's motion for class certification. Accordingly, the Parties respectfully ask that the Court enter the above stipulated schedule.

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2 Dated this 20th day of March, 2024
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23 *Counsel for Defendant SYMETRA
LIFE INSURANCE COMPANY*

ORDER

Pursuant to the Parties' joint motion to modify scheduling order, the Parties' joint proposed schedule is adopted, as set forth below.

Event	Proposed Deadline
Deadline to file Defendant's motion for summary judgment	Thursday, March 28, 2024
Deadline to file Plaintiff's opposition to motion to exclude expert opinion (ECF 81)	Monday, April 1, 2024 (unchanged)
Deadline to file Defendant's Reply brief in support of motion to exclude expert opinion (ECF 81)	Monday, April 22, 2024
Deadline to file Plaintiff's Reply brief in support of class certification motion and any objection to Defendant's experts	Monday, April 22, 2024
Rebuttal reports from Plaintiff's expert witnesses under FRCP 26(a)(2) for use in support of class certification	Monday, April 22, 2024
Deadline to file Plaintiff's opposition to Defendant's motion for summary judgment	Friday, April 26, 2024
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Settlement Conference, if mediation has been requested by the parties per LCR 39.1, held no later than	Friday, May 24, 2024 (unchanged)
Mediation per LCR 39.1, if requested by the parties, held no later than	Friday, June 28, 2024 (unchanged)

All other case deadlines will be determined after the Court issues its decision on class certification. The Parties are ordered to meet and confer within 21 days of the Court's class certification ruling and submit a joint proposed schedule for the Court's consideration.

IT IS SO ORDERED.

Dated this 21st day of March 2024

Kymberly K. Evanson
United States District Judge